

**ASSEMBLY BILL**

**No. 1276**

**Introduced by Assembly Member Jerome Horton**

February 21, 2003

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An act to amend Sections 30436 and 30449 of, and to add Section 30163.1 to, the Revenue and Taxation Code, relating to tobacco, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, as introduced, Jerome Horton. Tobacco Settlement Agreement: escrow compliance.

(1) The Cigarette and Tobacco Products Tax Law generally requires licensed cigarette distributors to purchase and affix an appropriate stamp to, or make an appropriate meter impression upon, each package of cigarettes prior to distribution, as provided. Under existing law, the State Board of Equalization administers provisions relating to the cigarette and tobacco products tax.

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the MSA between the state and counties and certain cities in the state. Existing law requires any tobacco product manufacturer that does not participate in the MSA, and that sells cigarettes to consumers in California, to place specified amounts into a qualified escrow fund by April 15 of each year.

This bill would require the Attorney General to develop and post on the Attorney General's Internet web site a list of tobacco product

manufacturers that have provided current and accurate certifications in accordance with the requirements of the bill. This bill would require the Attorney General's Web site to also include all brand families, as defined, that have been listed in the certifications. The bill would prohibit any tax stamp or meter impression to be affixed unless the tobacco product manufacturer and brand family in question is included on the Attorney General's list. The bill would give the Attorney General and the board specified authority and duties in this regard.

This bill would impose specified penalties, applicable to a tobacco product manufacturer or distributor, for failure to comply with the various provisions of the bill, including civil penalties. The bill would also make it a misdemeanor for a tobacco product manufacturer to make specified false representations, or for any person to (1) sell or otherwise distribute cigarettes in violation of the bill, or (2) acquire, hold, own, possess, transport, import, or cause cigarettes to be imported in violation of the bill, thus creating a state-mandated local program. The bill would deem it unfair competition for any person to affix any tax stamp or meter impression, or to pay any tax in violation of the requirements of the bill.

The bill would provide for disgorgement of any profits, gains, gross receipts, or other benefits from a violation of the bill, as specified. The bill would require these funds to be paid as restitution, with any residue to be paid into the Tobacco Control Fund created by the bill.

(2) Existing law requires that certain cigarette and tobacco products be forfeited to the state under specified circumstances, upon seizure by the board.

This bill would add to the forfeiture list cigarette and tobacco products to which cigarette tax stamps or meter impressions are affixed in violation of the prohibition specified in (1) above, and would require that these cigarette and tobacco products be destroyed.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds that violations of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The Legislature further finds that enacting procedural enhancements will help prevent these violations, which constitute unfair business practices, and will aid the enforcement of the Model Statute set forth in Exhibit T of the Master Settlement Agreement, thereby safeguarding the Master Settlement Agreement, the fiscal soundness of the state, and the public health. It is the intent of the Legislature that this act shall not be interpreted to amend Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

SEC. 2. Section 30163.1 is added to the Revenue and Taxation Code, to read:

30163.1. (a) The following definitions shall apply for purposes of this section:

(1) ‘Board’ means the State Board of Equalization.

(2) ‘Brand family’ means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers including, but not limited to, ‘menthol,’ ‘lights,’ ‘kings,’ and ‘100s’ and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(3) ‘Cigarette’ has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.

(4) ‘Distributor’ has the same meaning as in Section 30011.

(5) ‘MSA’ means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.

(6) ‘Nonparticipating manufacturer’ means any tobacco product manufacturer that is not a participating manufacturer.

(7) ‘Participating manufacturer’ has the same meaning as in subsection II(jj) of the MSA.

1 (8) ‘Qualified escrow fund’ has the same meaning as in  
2 subdivision (f) of Section 104556 of the Health and Safety Code.

3 (9) ‘Tobacco product manufacturer’ has the same meaning as  
4 in subdivision (i) of Section 104556 of the Health and Safety Code.

5 (10) ‘Units sold’ has the same meaning as in subdivision (j) of  
6 Section 104556 of the Health and Safety Code.

7 (b) Every tobacco product manufacturer whose cigarettes are  
8 sold in this state, whether directly or through a distributor, retailer,  
9 or similar intermediary or intermediaries, shall execute and deliver  
10 on a form and in the manner prescribed by the Attorney General  
11 a certification to the Attorney General no later than the 30th day  
12 of April each year, certifying under penalty of perjury that, as of  
13 the date of the certification, the tobacco product manufacturer is  
14 either a participating manufacturer, or is in full compliance with  
15 Article 3 (commencing with Section 104555) of Chapter 1 of Part  
16 3 of Division 103 of the Health and Safety Code, including all  
17 installment payments required by that article and this section, and  
18 any regulations promulgated pursuant thereto.

19 (1) A participating manufacturer shall include in its  
20 certification a complete list of its brand families. The participating  
21 manufacturer shall update the list 30 days prior to any addition to  
22 or modification of its brand families by executing and delivering  
23 a supplemental certification to the Attorney General.

24 (2) A nonparticipating manufacturer shall include in its  
25 certification a complete list of all of its brand families, in  
26 accordance with the following requirements:

27 (A) Separately listing brand families of cigarettes and the  
28 number of units sold for each brand family that were sold in the  
29 state during the preceding calendar year.

30 (B) Separately listing all of its brand families that have been  
31 sold in the state at any time during the current calendar year.

32 (C) Indicating by an asterisk any brand family sold in the state  
33 during the preceding calendar year that is no longer being sold in  
34 the state as of the date of the certification.

35 (D) Identifying by name and address any other manufacturer,  
36 including all fabricators or makers of the brand families in the  
37 preceding or current calendar year in a form, manner, and detail as  
38 required by the Attorney General. The nonparticipating  
39 manufacturer shall update the list 30 days prior to any addition to



1 or modification of its brand families by executing and delivering  
2 a supplemental certification to the Attorney General.

3 (3) In the case of a nonparticipating manufacturer, the  
4 certification shall further certify all of the following:

5 (A) That the nonparticipating manufacturer is registered to do  
6 business in the state, or has appointed a resident agent for service  
7 of process and provided notice thereof as required by subdivision  
8 (f).

9 (B) That the nonparticipating manufacturer has done all of the  
10 following:

11 (i) Established and continues to maintain a qualified escrow  
12 fund as that term is defined in subdivision (f) of Section 104556  
13 of the Health and Safety Code and implementing regulations.

14 (ii) Executed a qualified escrow agreement that has been  
15 reviewed and approved by the Attorney General and that governs  
16 the qualified escrow fund.

17 (iii) If the nonparticipating manufacturer is not the fabricator  
18 or maker of the cigarettes, that the escrow agreement, certification,  
19 reports, and any other forms required by Article 3 (commencing  
20 with Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
21 Health and Safety Code and implementing regulations is signed by  
22 the company that fabricates or makes the cigarettes and in the  
23 manner required by the Attorney General.

24 (C) That the nonparticipating manufacturer is in full  
25 compliance with Article 3 (commencing with Section 104555) of  
26 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,  
27 including paragraph (2) of subdivision (a) of Section 104557 of the  
28 Health and Safety Code, this section, and any regulations  
29 promulgated pursuant thereto.

30 (D) That the manufacturer has provided all of the following:

31 (i) The name, address, and telephone number of the financial  
32 institution where the nonparticipating manufacturer has  
33 established the qualified escrow fund required pursuant to Article  
34 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
35 Division 103 of the Health and Safety Code and all regulations  
36 promulgated thereto.

37 (ii) The account number of the qualified escrow fund and  
38 subaccount number for the State of California.

39 (iii) The amount the nonparticipating manufacturer placed in  
40 the fund for cigarettes sold in the state during the preceding

1 calendar year, the date and amount of each deposit, and any  
2 confirming evidence or verification as may be deemed necessary  
3 by the Attorney General.

4 (iv) The amounts and dates of any withdrawal or transfer of  
5 funds the nonparticipating manufacturer made at any time from  
6 the fund or from any other qualified escrow fund into which it ever  
7 made escrow payments pursuant to Article 3 (commencing with  
8 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
9 Health and Safety Code and all regulations promulgated thereto.

10 (4) (A) A tobacco product manufacturer may not include a  
11 brand family in its certification unless either of the following is  
12 true:

13 (i) In the case of a participating manufacturer, the participating  
14 manufacturer affirms that the brand family is to be deemed to be  
15 its cigarettes for purposes of calculating its payments under the  
16 MSA for the relevant year, in the volume and shares determined  
17 pursuant to the MSA.

18 (ii) In the case of a nonparticipating manufacturer, the  
19 nonparticipating manufacturer affirms that the brand family is to  
20 be deemed to be its cigarettes for purposes of Article 3  
21 (commencing with Section 104555) of Chapter 1 of Part 3 of  
22 Division 103 of the Health and Safety Code, including paragraph  
23 (2) of subdivision (a) of Section 104557 of the Health and Safety  
24 Code, and any regulations promulgated pursuant thereto and this  
25 section.

26 (B) Nothing in this section shall be construed as limiting or  
27 otherwise affecting the state's right to maintain that a brand family  
28 constitutes cigarettes of a different tobacco product manufacturer  
29 for purposes of calculating payments under the MSA or for  
30 purposes of Article 3 (commencing with Section 104555) of  
31 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
32 and any regulations promulgated pursuant thereto.

33 (5) A tobacco product manufacturer shall maintain all invoices  
34 and documentation of sales and other information relied upon for  
35 the certification for a period of five years, unless otherwise  
36 required by law to maintain them for a longer period of time.

37 (c) Not later than \_\_\_\_ the Attorney General shall develop and  
38 publish on its Internet Web site a directory listing of all tobacco  
39 product manufacturers that have provided current, timely, and  
40 accurate certifications conforming to the requirements of



1 subdivision (b) and all brand families that are listed in the  
2 certifications, except as specified below.

3 (1) The Attorney General shall not include or retain in the  
4 directory the name or brand families of any nonparticipating  
5 manufacturer that fails to provide the required certification or  
6 whose certification the Attorney General determines is not in  
7 compliance with subdivision (b), unless the Attorney General has  
8 determined that the violation has been cured to the satisfaction of  
9 the Attorney General.

10 (2) Neither a tobacco product manufacturer nor brand family  
11 shall be included or retained in the directory if the Attorney  
12 General concludes that either of the following is true:

13 (A) In the case of a nonparticipating manufacturer, any escrow  
14 deposit required pursuant to Section 104557 of the Health and  
15 Safety Code for any period for any brand family, whether or not  
16 listed by the nonparticipating manufacturer, has not been fully  
17 deposited into a qualified escrow fund governed by a qualified  
18 escrow agreement that has been approved by the Attorney  
19 General.

20 (B) Any outstanding final judgment, including interest  
21 thereon, for violations of Article 3 (commencing with Section  
22 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
23 Safety Code, and any regulations promulgated pursuant thereto,  
24 has not been fully satisfied for the brand family and the  
25 manufacturer.

26 (3) The Attorney General shall update the directory as  
27 necessary in order to correct mistakes and to add or remove a  
28 tobacco product manufacturer or brand family to keep the  
29 directory in conformity with the requirements of this section. The  
30 Attorney General shall promptly provide distributors with written  
31 notice of each tobacco product manufacturer and brand family that  
32 the Attorney General has added to, or excluded or removed from  
33 the list.

34 (4) Every distributor shall provide to the Attorney General and  
35 update as necessary, an electronic mail address for the purpose of  
36 receiving any notifications as may be required by this section.

37 (5) The Attorney General shall provide each tobacco product  
38 manufacturer that has provided all certifications and other  
39 information required by this section with a written  
40 acknowledgment of receipt within seven business days after

1 receiving the certifications and other materials. Each tobacco  
2 product manufacturer shall provide to each distributor to whom it  
3 sells or ships cigarettes, or any tobacco product defined as a  
4 cigarette under this section, a copy of each acknowledgment of  
5 receipt provided to the manufacturer by the Attorney General.  
6 Upon request, the Attorney General shall provide any distributor  
7 with a copy of the most recent written acknowledgment of receipt  
8 provided to the tobacco product manufacturer.

9 (d) (1) The Attorney General may exclude or remove from the  
10 list required by subdivision (c) a tobacco product manufacturer or  
11 any of its brand families, based on a determination that the  
12 manufacturer is not a participating manufacturer and has not made  
13 all escrow payments required by paragraph (2) of subdivision (a)  
14 of Section 104557 of the Health and Safety Code, in accordance  
15 with that subdivision, or has not complied with this section. Before  
16 the exclusion or removal may take effect, the Attorney General  
17 shall notify the manufacturer of this determination.

18 (2) Upon receiving notice from the Attorney General pursuant  
19 to paragraph (1), the manufacturer may challenge the Attorney  
20 General's determination as erroneous, and may seek relief from  
21 the determination, by filing a petition for writ of mandate pursuant  
22 to Section 1085 of the Code of Civil Procedure for that purpose in  
23 the Superior Court for the County of Sacramento, or as otherwise  
24 provided by law. The filing of the petition shall operate to stay the  
25 Attorney General's determination, if the manufacturer has paid  
26 into escrow the full amount of any deficiency in the escrow  
27 payments that the Attorney General has determined the tobacco  
28 product manufacturer was required to have made under paragraph  
29 (2) of subdivision (a) of Section 104557 of the Health and Safety  
30 Code, including any installment payments required under  
31 subdivision (h), pending final resolution of the action.

32 (e) (1) No person shall affix, or cause to be affixed, any tax  
33 stamp or meter impression to a package of cigarettes pursuant to  
34 subdivision (a) of Section 30163, or pay the tax levied pursuant to  
35 Sections 30123 and 30131.2 on a tobacco product defined as a  
36 cigarette under this section, unless the brand family of the  
37 cigarettes or tobacco product, and the tobacco product  
38 manufacturer that makes or sells the cigarettes or tobacco product,  
39 are included on the list posted by the Attorney General pursuant  
40 to subdivision (c).

(2) No person shall sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) No person shall do either of the following:

(A) Sell or distribute cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(f) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the board and the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the board and Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as

1 herein required shall be deemed to have appointed the Secretary  
2 of State as its agent, as provided in Section 2105 of the  
3 Corporations Code, and may be proceeded against in courts of this  
4 state by service of process upon the Secretary of State. However,  
5 the appointment of the Secretary of State pursuant to this provision  
6 as the agent for service of process shall not satisfy the condition  
7 precedent specified in paragraph (1) to having its brand families  
8 listed or retained in the directory.

9 (g) (1) Not later than 25 days after the end of each calendar  
10 quarter, and more frequently if so directed by the board or the  
11 Attorney General, each distributor shall submit any information as  
12 the board or Attorney General requires to facilitate compliance  
13 with this section, including, but not limited to, a list by brand  
14 family of the total number of cigarettes or in the case of roll your  
15 own, the equivalent stick count for which the distributor affixed  
16 stamps during the previous calendar month or otherwise paid the  
17 tax due for those cigarettes. The distributor shall maintain, and  
18 shall make available to the board and the Attorney General, all  
19 invoices and documentation of sales of all nonparticipating  
20 manufacturer cigarettes and any other information relied upon in  
21 reporting to the board and the Attorney General for a period of five  
22 years.

23 (2) Notwithstanding Section 30455, the board is authorized to  
24 disclose to the Attorney General any information received under  
25 this part for purposes of determining compliance with and  
26 enforcing the provisions of this section and Article 3 (commencing  
27 with Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
28 Health and Safety Code, and any regulations promulgated  
29 pursuant thereto. The board and Attorney General shall share with  
30 each other the information received under this section, and may  
31 share that information with other federal, state, or local agencies,  
32 only for purposes of enforcement of this section, Article 3  
33 (commencing with Section 104555) of Chapter 1 of Part 3 of  
34 Division 103 of the Health and Safety Code, and any regulations  
35 promulgated pursuant thereto, or corresponding laws of other  
36 states.

37 (3) At any time, the Attorney General may require from the  
38 nonparticipating manufacturer proof from the financial institution  
39 in which the manufacturer has established a qualified escrow fund  
40 for the purpose of compliance with Article 3 (commencing with



1 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
2 Health and Safety Code, and any regulations promulgated  
3 pursuant thereto, of the amount of money in the fund being held  
4 on behalf of the state and the dates of deposits, and listing the  
5 amounts of all withdrawals from the fund and the dates thereof.

6 (4) In addition to the information required to be submitted  
7 pursuant to this section or Article 3 (commencing with Section  
8 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
9 Safety Code and any regulations promulgated pursuant thereto,  
10 the board or the Attorney General may require a retailer,  
11 wholesaler, distributor, or tobacco product manufacturer to submit  
12 any additional information including, but not limited to, samples  
13 of the packaging or labeling of each brand family, as is necessary  
14 to enable the Attorney General to determine whether a tobacco  
15 product manufacturer is in compliance with this section, or Article  
16 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
17 Division 103 of the Health Safety Code, and any regulations  
18 promulgated pursuant thereto.

19 (h) To promote compliance with this section, the Attorney  
20 General may promulgate regulations requiring a tobacco product  
21 manufacturer subject to the requirements of paragraph (2) of  
22 subdivision (a) of Section 104557 to make the escrow deposits  
23 required in quarterly or other specified installments during the  
24 year in which the sales covered by the deposits are made. The  
25 Attorney General may require production of information  
26 sufficient to enable the Attorney General to determine the  
27 adequacy of the amount of the installment deposit.

28 (i) (1) In addition to any other civil or criminal penalty  
29 provided by law, upon a finding that a distributor has violated  
30 subdivision (e), or paragraph (1) of subdivision (g), the board may  
31 take the following actions:

32 (A) In the case of the first offense, the board may revoke or  
33 suspend the license or licenses of the distributor pursuant to the  
34 procedures applicable to the revocation of a license set forth in  
35 Section 30148.

36 (B) In the case of a second or any subsequent offense, in  
37 addition to the action authorized under subparagraph (A), the  
38 board may impose a civil penalty in an amount not to exceed the  
39 greater of either of the following:

1 (i) Five times the retail value of the cigarettes or tobacco  
2 products defined as cigarettes under this section.

3 (ii) Five thousand dollars (\$5,000).

4 (2) A distributor in any action for a violation of subdivision (e)  
5 shall have a defense provided that either of the following is true:

6 (A) At the time of the violation, the cigarettes or tobacco  
7 products claimed to be the subject of the alleged violation  
8 belonged to a brand family that was included on the list required  
9 by subdivision (c).

10 (B) At the time of the violation, the distributor possessed a copy  
11 of the Attorney General's most recent written acknowledgment of  
12 receipt of the certifications and other information required as a  
13 condition of including the brand family on the list required by  
14 subdivision (c).

15 (3) The defense described in subparagraph (B) of paragraph (2)  
16 shall not be available to a distributor if, at the time of the violation,  
17 the Attorney General had provided the distributor with written  
18 notice that the brand family had been excluded or removed from  
19 the list required by subdivision (c), or the distributor failed to  
20 provide the Attorney General with a current address for the receipt  
21 of written notice through electronic mail as required by paragraph  
22 (4) of subdivision (c).

23 (4) A violation of paragraph (3) of subdivision (e) shall  
24 constitute a misdemeanor.

25 (j) If a distributor affixes a stamp or meter impression to a  
26 package of cigarettes under subdivision (a) of Section 30163, or  
27 pays the tax levied under Sections 30123 and 30131.2 on a tobacco  
28 product defined as a cigarette under this section, during the period  
29 between the date on which the brand family of the cigarettes or  
30 tobacco product was excluded or removed from the list required  
31 by subdivision (c) and the date on which the distributor received  
32 notice of the exclusion or removal under paragraph (4) of  
33 subdivision (c), then both of the following shall apply:

34 (1) The distributor shall be entitled to a credit for the tax paid  
35 by the distributor with respect to the cigarette or tobacco product  
36 to which the stamp or meter impression was affixed, or the tax paid  
37 during that period. The distributor shall comply with regulations  
38 prescribed by the board regarding refunds and credits that are  
39 adopted pursuant to Section 30177. If the distributor has sold the  
40 cigarette or tobacco product to a wholesaler or retailer, and has

1 received payment from the wholesaler or retailer, the distributor  
2 shall provide the credit to the wholesaler or retailer.

3 (2) The brand family shall not be included on or restored to the  
4 list until the tobacco product manufacturer has reimbursed the  
5 distributor for the cost to the distributor of the cigarettes or tobacco  
6 product to which the stamp or meter impression was affixed, or the  
7 tax paid, during that period.

8 (k) Any tobacco product manufacturer that falsely represents  
9 any of the following to any person shall be guilty of a misdemeanor  
10 for each false representation:

11 (1) Any information required under subdivision (b).

12 (2) That the tobacco product manufacturer is a participating  
13 manufacturer.

14 (3) That the tobacco product manufacturer or any other person  
15 has made any or all escrow payments required by paragraph (2) of  
16 subdivision (a) of Section 104557 of the Health and Safety Code,  
17 if applicable to the manufacturer.

18 (4) That it has complied with subdivision (b), or with paragraph  
19 (1) of subdivision (g), if applicable to the manufacturer.

20 (l) A violation of subdivision (e) shall constitute unfair  
21 competition under Section 17200 of the Business and Professions  
22 Code.

23 (m) No person shall be issued a license or granted a renewal of  
24 a license to act as a stamping agent unless that person has certified  
25 in writing, under penalty of perjury, that the person will comply  
26 fully with this section.

27 (n) For the year 2003, if the effective date of the act that added  
28 this section is later than March 16, 2003, the first report of  
29 distributors required by paragraph (1) of subdivision (g) shall be  
30 due 30 days after that effective date, the certifications by a tobacco  
31 product manufacturer described in subdivision (b) shall be due 45  
32 days after that effective date, and the directory described in  
33 subdivision (c) shall be published or made available within 90 days  
34 after that effective date.

35 (o) The Attorney General may adopt rules and regulations for  
36 the administration and enforcement of this section. The rules and  
37 regulations may establish procedures for including in the list  
38 described in subdivision (c) tobacco product manufacturers that  
39 are not participating manufacturers and were not required to make  
40 escrow payments under paragraph (2) of subdivision (a) of Section

1 104557 of the Health and Safety Code, for sales made during any  
2 preceding calendar year, and brand families of those  
3 manufacturers. The regulations adopted to effect the purposes of  
4 this section are emergency regulations in accordance with Chapter  
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
6 Title 2 of the Government Code. For purposes of that chapter,  
7 including Section 11349.6 of the Government Code, the adoption  
8 of the regulations shall be considered by the Office of  
9 Administrative Law to be necessary for the immediate  
10 preservations of the public peace, health and safety, and general  
11 welfare. Notwithstanding subdivision (e) of Section 11346.1 of  
12 the Government Code, the regulations shall be repealed 180 days  
13 after their effective date, unless the adopting authority or agency  
14 complies with that chapter, as provided in subdivision (e) of  
15 Section 11346.1 of the Government Code.

16 (p) In any action brought by the state to enforce this section, the  
17 state shall be entitled to recover the costs of investigation, expert  
18 witness fees, costs of the action, and reasonable attorney's fees.

19 (q) (1) If a court determines that a person has violated this  
20 section, the court shall order any profits, gain, gross receipts, or  
21 other benefit from the violation to be disgorged in restitution to  
22 distributors, wholesalers, retailers, or tobacco product  
23 manufacturers who filed the action for restitution or unfair  
24 competition or became a party to an action filed by the Attorney  
25 General or other public official or agency. After the payment of  
26 restitution, the court shall order the residue be paid to the State  
27 Treasurer for deposit into the Tobacco Control Special Fund,  
28 which is hereby created within the State Treasury.

29 (2) Upon appropriation by the Legislature, all funds in the  
30 Tobacco Control Special Fund shall be available for expenditure  
31 for the purposes of enforcing this section, or Article 3  
32 (commencing with Section 104555) of Chapter 1 of Part 3 of  
33 Division 103 of the Health and Safety Code, and any regulations  
34 promulgated pursuant thereto. No moneys in the Tobacco Control  
35 Special Fund shall be used to supplant state or local General Fund  
36 money for any purpose.

37 (r) Unless otherwise expressly provided, the remedies or  
38 penalties provided by this section are cumulative to each other and  
39 to the remedies or penalties available under all other laws of this  
40 state.



SEC. 3. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is hereby forfeited to the ~~State of California~~ *state*:

(a) Cigarettes or tobacco products transported upon the highways, roads, or streets of this state in violation of ~~the provisions of~~ Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored, or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money, or other contents thereof, which has been loaded in whole or in part with packages of cigarettes ~~which~~ *that* do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.

*(e) Cigarettes or tobacco products to which are affixed California cigarette tax stamps or meter impressions, or for which tax is paid pursuant to Sections 30123 and 30131.2, in violation of Section 30163.1, regardless of whether the violation is subject to the defense described in paragraph (2) of subdivision (i) of Section 30163.1.*

SEC. 4. Section 30449 of the Revenue and Taxation Code is amended to read:

30449. ~~Any~~ *(a) Except as provided in subdivision (b), any* property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of ~~such~~ *the* sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than ten days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is

1 ~~unsalable it may destroy such property.~~ *it may destroy that*  
2 *property.*

3 *(b) Any property forfeited to the state pursuant to subdivision*  
4 *(e) of Section 30436 shall be destroyed.*

5 *(c) A record shall be kept of all property destroyed pursuant to*  
6 *this section showing the nature of the property, the quantity, the*  
7 *reason for, and the manner of destruction. The proceeds of the sale*  
8 *and any money forfeited to the state shall be deposited in the State*  
9 *Treasury to the credit of the General Fund.*

10 SEC. 5. If a court of competent jurisdiction finds that the  
11 provisions of this act and of Article 3 (commencing with Section  
12 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
13 Safety Code, and any regulations promulgated pursuant thereto,  
14 conflict and cannot be harmonized, then the provisions of Article  
15 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
16 Division 103 of the Health and Safety Code, and any regulations  
17 promulgated pursuant thereto shall control. If any provision of this  
18 act causes Article 3 (commencing with Section 104555) of  
19 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
20 and any regulations promulgated pursuant thereto to no longer  
21 constitute a qualifying or model statute, as those terms are defined  
22 in the tobacco Master Settlement Agreement, then that portion of  
23 this act shall not be valid. If any provision of this act is for any  
24 reason held to be invalid, unlawful, or unconstitutional, that  
25 determination shall not affect the validity of the remaining  
26 portions of this act or any part thereof.

27 SEC. 6. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.

36 SEC. 7. This act is an urgency statute necessary for the  
37 immediate preservation of the public peace, health, or safety  
38 within the meaning of Article IV of the Constitution and shall go  
39 into immediate effect. The facts constituting the necessity are:

1     In order to prevent violations of Article 3 (commencing with  
2     Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
3     Health and Safety Code that threaten the integrity of the tobacco  
4     Master Settlement Agreement, the fiscal soundness of the state,  
5     and the public health, it is necessary that this act take effect  
6     immediately.

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